

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC.  
SECURITIES, DERIVATIVE AND ERISA  
LITIGATION

This Document Relates To:  
Derivative Action 07-cv-9696 (JSR) (DFE)

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Master File No. 07-cv-9633 (JSR)

ECF Case/Electronically Filed

STIPULATION AND  
**PROPOSED ORDER**

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DOC #:  
DATE FILED: 10-20-09

WHEREAS, on September 23, 2008, the plaintiffs in the consolidated derivative action no. 07-cv-9696 (JSR) (DFE) (the "Consolidated Derivative Action") filed a Verified Second Amended Shareholder Derivative and Class Action Complaint (the "Second Amended Complaint"), that asserted putative class claims against defendants Merrill Lynch & Co., Inc. ("Merrill Lynch"), Bank of America Corporation ("Bank of America"), John A. Thain, Carol T. Christ, Armando M. Codina, Virgis W. Colbert, John D. Finnegan, Judith Mayhew Jones, Aulana L. Peters, Joseph W. Prueher, Charles O. Rossotti, Ahmass L. Fakahany and Gregory J. Fleming (collectively, the "Class Claim Defendants") and alleged, among other things, that certain of the Class Claim Defendants breached their fiduciary duties to a proposed class of Merrill Lynch shareholders in connection with the merger between Merrill Lynch and a subsidiary of Bank of America (the "Merger") and that Bank of America aided and abetted those breaches (Counts IX through XIII of the Second Amended Complaint) (the "Class Claims");

WHEREAS, on September 26, 2008, a putative class action complaint was filed in the Delaware Court of Chancery captioned *County of York Employees Retirement Plan v. Merrill Lynch & Co., Inc., C.A. No. 4066-VCN*, that named certain Class Claim Defendants and alleged similar breaches of fiduciary duty and aiding and abetting in connection with the Merger (the "Delaware Action");

WHEREAS, by letter dated November 26, 2008, counsel for plaintiffs in the Consolidated Derivative Action advised the Court of a proposed settlement of the Class Claims in conjunction with the settlement of the Delaware Action;

WHEREAS, on February 17, 2009, the Court issued its Opinion and Order that granted defendants' motions to dismiss Counts I through VIII of the Second Amended Complaint for lack of standing, and directed the Clerk to enter judgment dismissing the Consolidated Derivative Action without prejudice to refiling in the circumstances stated in the Opinion and Order;

WHEREAS, on March 3, 2009, the Court issued an Amended Order of Dismissal that amended the Opinion and Order to clarify that the Class Claims were not subject to defendants' motions to dismiss for lack of standing and to provide that Counts I through VIII only of the Second Amended Complaint were dismissed without prejudice to refiling in the circumstances stated in the Opinion and Order;

WHEREAS, on June 15, 2009, counsel for plaintiffs in the Consolidated Derivative Action advised the Court that the parties in the Consolidated Derivative Action and the Delaware Action had entered into a Stipulation of Settlement dated as of June 12, 2009 (the "Stipulation of Settlement"), that set forth a proposed settlement (the "Settlement") of the Delaware Action and the Class Claims asserted in the Second Amended Complaint which would be presented to the Delaware Court of Chancery for approval (the "Settlement");

WHEREAS, on July 27, 2009, one of the plaintiffs in the Consolidated Derivative Action filed a Verified Third Amended Shareholder Derivative and Class Action Complaint (the "Third Amended Complaint"), that asserted both double derivative claims on behalf of Bank of America and the Class Claims (renumbered as Counts XIII through XVII of the Third Amended Complaint);

WHEREAS, following notice to the class (a copy of said notice being attached hereto as Exhibit A), on August 31, 2009, the Delaware Court of Chancery conducted a hearing with respect to the Settlement and issued an Order and Final Judgment (a copy of which is annexed hereto as Exhibit B), in which, among other things, the Delaware Court of Chancery (i) certified the Delaware Action as a class action on behalf of the class of Merrill Lynch common stock shareholders set forth in the Stipulation of Settlement (the "Class"), (ii) concluded that due and adequate notice of the proceedings and a full opportunity to be heard had been provided to members of the Class, (iii) approved the Settlement, including the release by the Class of the Class Claims, as fair, reasonable, adequate, and in the best interests of the Class and Merrill Lynch, and (iv) directed the parties to consummate the Settlement in accordance with the Stipulation of Settlement;

WHEREAS, the Stipulation of Settlement provides that, following the date on which the Delaware Court of Chancery's Order and Final Judgment approving the Settlement becomes final and no longer subject to appeal, the parties to the Consolidated Derivative Action shall seek dismissal with prejudice of the Class Claims by this Court; and

WHEREAS, no appeal has been taken from the Delaware Court of Chancery's Order and Final Judgment, which has now become final and no longer subject to appeal;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and among the parties hereto, through their respective attorneys, that:

1. The Class Claims (Counts XIII through XVII) of the Third Amended Complaint are hereby dismissed with prejudice, and the Third Amended Complaint is deemed amended accordingly pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. This Order does not apply to Counts I through XII of the Third Amended Complaint and is without

prejudice to any of defendants' positions with respect to those counts or the propriety of any amendments to the Second Amended Complaint.

2. No further notice of the dismissal of the Class Claims shall be given to the Class in view of the notice previously given to the Class in conjunction with the Delaware Court of Chancery's hearing with respect to the Settlement, which the Delaware Court of Chancery found to be due and adequate notice of the Class Claims, the proceedings, the Settlement and the terms and conditions of the dismissal of the Class Claims.

Dated: New York, New York  
October 16, 2009

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IT IS SO ORDERED.

  
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U.S.D.J.

Dated: New York, New York  
October 20, 2009